

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A. HABIB, Minor.

UNPUBLISHED

July 17, 2014

No. 320504

Washtenaw Circuit Court

Family Division

LC No. 12-000120-NA

Before: MURRAY, P.J., and O'CONNELL and BORRELLO, JJ.

PER CURIAM.

Petitioner-appellant appeals as of right the January 28, 2014 order entitled “Order Following Hearing to Terminate Parental Rights,” in which the trial court stated that it had jurisdiction over the minor child and also denied the petition to terminate respondent-appellee’s parental rights. We vacate the jurisdictional portion of the order and remand for further proceedings consistent with this opinion. In addition, we reverse the portions of the separate January 28, 2014 order in which the trial court dismissed the petition and closed the case.¹

Petitioner first argues that the trial court failed to make findings of fact regarding the statutory basis for jurisdiction. We agree. To exercise jurisdiction in a child protective proceeding, “the factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2.” *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993). This Court reviews a trial court’s decision to exercise jurisdiction for clear error “in light of the court’s findings of fact.” *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). The record must provide sufficient information to

¹ Petitioner did not claim an appeal or file an application for leave to appeal the separate January 28, 2014 order entitled “Order Following Dispositional Review and Permanency Planning Hearing.” However, because six months have not passed since the entry of that order, we find it proper to exercise our discretion and treat this order as having come to this Court by way of application for leave to appeal. MCR 7.205(G)(3)(a); *Wardell v Hincka*, 297 Mich App 127, 133 n 1; 822 NW2d 278 (2012). In the interest of judicial economy, we grant leave. *Wardell*, 297 Mich App at 133 n 1.

enable this Court to engage in a meaningful review. See generally *Foskett v Foskett*, 247 Mich App 1, 13; 634 NW2d 363 (2001).

The record in this case is insufficient to enable this Court to review the adjudicative phase of the proceedings. As our Supreme Court has explained, child protective proceedings have two phases: the adjudicative phase and the dispositional phase. *In re Sanders*, 495 Mich 394, ___; ___ NW2d ___ (2014), slip op p 5. In the adjudicative phase, the petitioner has the burden of proving by a preponderance of the evidence one or more statutory grounds for jurisdiction over the child. *Id.*, slip op p 6. To decide whether it is proper to assume jurisdiction over the child, “the trial court must examine the child’s situation at the time the petition was filed.” *In re MU*, 264 Mich App 270, 279; 690 NW2d 495 (2004).

In this case, petitioner requested that the trial court assume jurisdiction over the minor child pursuant to MCL 712A.2(b)(1) and (b)(2), and terminate respondent’s parental rights at the initial dispositional hearing. At the conclusion of the combined adjudication trial and termination hearing, the trial court stated on the record, “I don’t find there’s a jurisdictional basis to continue involvement in this case.” However, the trial court did not articulate any relevant findings to support this conclusion. The record does not indicate that the trial court engaged in the requisite analysis of the child’s situation as it existed at the time the petition was filed. See *In re MU*, 264 Mich App at 279.

The record is further complicated by the inconsistency between the trial court’s statement on the record and the court’s accompanying written order. The trial court’s oral statement indicated that there was no basis for jurisdiction; in contrast, the court’s written Order Following Hearing to Terminate Parental Rights indicated that the minor child was found to have come within the court’s jurisdiction. Because a court speaks through its written orders and judgments, not through its oral pronouncements, *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009), we must conclude the trial court took jurisdiction over the minor child. We are unable to review the trial court’s jurisdictional decision, however, because the record contains no factual findings regarding jurisdiction. Accordingly, we must vacate the portion of the January 28, 2014 order holding that the minor child was found to come within the jurisdiction of the trial court and remand to the trial court for findings of fact regarding its jurisdictional decision.

We acknowledge that the trial court entered a separate order on January 28, 2014, entitled “Order Following Dispositional Review and Permanency Planning Hearing.” We reverse the portions of that order that dismissed the petition and closed the case. This reversal is necessary to allow the trial court on remand to make factual findings and a ruling regarding whether assumption of jurisdiction is proper, and to allow the court to engage in further proceedings if necessary.

Petitioner next argues that the trial court applied an improper evidentiary standard when considering whether the evidence supported jurisdiction over the minor child. It is unclear from the record whether the trial court applied a preponderance of the evidence standard or a clear and convincing standard when determining that the child came within the jurisdictional requirements of MCL 712A.2. Because the clear and convincing standard is a higher standard of proof than the preponderance of the evidence standard, *In re Moss*, 301 Mich App 76, 89; 836 NW2d 182

(2013), it would have been harmless error if the trial court did apply a clear and convincing standard when determining that it was proper to assume jurisdiction. *City of Port Huron v Amoco Oil Co, Inc*, 229 Mich App 616, 635; 583 NW2d 215 (1998). Nonetheless, we instruct the trial court to utilize the preponderance of the evidence standard when making its jurisdictional determination on remand. See MCR 3.972(C).

Respondent and the guardian ad litem argue on appeal that the record indicates the trial court properly declined to take jurisdiction over the child. In addition, respondent argues that any mistake in the jurisdictional phase was harmless given that the trial court declined to terminate respondent's parental rights. Because these arguments are based on the parties' inaccurate belief that the trial court's oral pronouncement regarding jurisdiction was binding, we find it unnecessary to consider these arguments on appeal.

We reverse the portions of the order entitled "Order Following Dispositional Review and Permanency Planning Hearing" that dismissed the petition and closed the case. We vacate the portion of the "Order Following Hearing to Terminate Parental Rights" holding that the minor child came within the jurisdiction of the trial court, and we remand to the trial court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Stephen L. Borrello